

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON TAXATION**

**Call to Order:** By **CHAIRMAN BOB DEPRATU**, on January 12, 2001 at 8:00 A.M., in Room 405 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Bob DePratu, Chairman (R)  
Sen. Alvin Ellis Jr., Vice Chairman (R)  
Sen. John C. Bohlinger (R)  
Sen. Mack Cole (R)  
Sen. Pete Ekegren (R)  
Sen. Jon Ellingson (D)  
Sen. Bill Glaser (R)  
Sen. Dan Harrington (D)

**Members Excused:** Senator Emily Stonington (D)

**Members Absent:** None.

**Staff Present:** Lee Heiman, Legislative Branch  
Deb Thompson, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 44, 1/9/2001; SB 46,  
1/9/2001; SB 47, 1/9/2001  
Executive Action: None

#### **HEARING ON SENATE BILL 44**

**Sponsor:**

**SENATOR AL BISHOP**, SD 9, presented SB 44. He explained when someone is delinquent with their taxes they get charged interest and penalties. When you file a warrant for distraint you collect the tax, the interest keeps running but the penalty stops. This bill would let the penalty run right along with the interest so you don't have to file another warrant. It runs up to a maximum

of 18%, or a percent and a half a month. **{Tape : 1; Side : A; Approx. Time Counter : 0 - 2}**

**Proponents:**

**Neil Peterson**, representing the Department of Revenue as Process Lead for the departments' Customer Service Center, spoke in favor of the bill. He distributed an example explaining a warrant.

**EXHIBIT (tas09a01)** He said the last legislature had proposed a graduated penalty. This bill would increase the penalty to the maximum. **{Tape : 1; Side : A; Approx. Time Counter : 2.6 - 6.9}**

**Opponents:** None

**Questions from Committee Members and Responses:**

**SENATOR ELLINGSON** asked where the accrual of the penalty was dealt with in the statute. **Neil Peterson** pointed out Section 1 of the bill in part 3, second sentence that described the lien and accrued interest, this would substitute penalty and interest. The penalty would continue to accrue at 1.5% of the tax owed.

**SENATOR COLE** asked when the department decided to file a warrant for distraint. **Mr. Peterson** replied this would be six to nine months after attempting to contact the taxpayer to arrange a payment plan. **{Tape : 1; Side : A; Approx. Time Counter : 6.9 - 9.2}**

**SENATOR ELLINGSON** asked for clarification on the interest. **Mr. Peterson** replied that it was interest on the amount of tax due not on the penalty.

**SENATOR BOHLINGER** pointed out the warrant for distraint provides the opportunity for the state to establish lien rights against any property this person may have. **Mr. Peterson** replied that was correct as it becomes a judgement and a lien against real and personal property. **SENATOR BOHLINGER** asked once the state had established a lien right wasn't that sufficient security for whatever obligation the taxpayer may have. He asked why the state would need to impose a further obligation on the taxpayer. **Mr. Peterson** replied the warrant for distraint was a collection tool which helps collect debt that is past due.

**EXHIBIT (tas09a02)** **{Tape : 1; Side : A; Approx. Time Counter : 9.2 - 14.4}**

**Closing by Sponsor:**

**SENATOR BISHOP** closed.

**HEARING ON SENATE BILL 46****Sponsor:**

**SENATOR AL BISHOP**, SD 9, presented SB 46. He said the bill amends a couple of sections of the code. The main thrust of the bill is that it provides when issued, a notice of levy or a distraint and has the same course and effect as a writ of execution. A writ of execution issued in a civil action is good for ten years. He distributed amendments that would allow an exception of 180 days. He explained that it was difficult for a levy to continue for a period of ten years on somebody's earnings or wages, as they are changing jobs and moving around. They would probably have to file a levy with another employer some place else. This was a suggestion by the department.

**Proponents:**

**Russ Hyatt**, Sub Process Lead for Accounts Receivable and Collections Unit at the Department of Revenue, spoke in favor of the bill. He distributed a handout that demonstrated the collection process. **EXHIBIT (tas09a03)** He described the collection process. If a collector is unable to contact the taxpayer to make arrangements for payment, they then decide when to file a warrant for distraint to collect the debt. He said this bill was important as it regards due process to make sure all notices that are required are provided to the taxpayer, providing the taxpayer opportunity to object and to notify them of the time limits. **Mr. Hyatt** explained that in most cases it went longer than thirty days. They often give them forty five days. At that point in time, collectors will contact the customer either by phone or by mail to discuss the matter with them and try to set up payment plans for get them to pay their debt and utilizing any collection tools that they can to secure and get a hold of the money they do owe. If the collector is unable to make contact or work out arrangements with the customer then the department has to make the decision as to when is the appropriate time to file a warrant for distraint to secure that debt. This is like a last resort as they try to make every effort to contact the taxpayer and collect the debt. He pointed out that there comes a time when no headway is made and there may be enough money involved then the department makes the decision to file the warrant for distraint in attempt to secure the debt from the taxpayer. At least fifty percent of those people that receive a warrant for distraint pay within thirty days. My Hyatt said SB 46 makes this bill specific to wage levies. They feel these are a good tool to use in trying to secure the debt for the

state. The benefits of the legislation would be a continuous levy which would create efficiencies in the collection process, eliminating the need for collectors to file several levies in order to collect a debt. It is actually an administrative savings to business. Right now a wage levy is only good for the pay period in which it is received, so they must continue to file those in order to continue to garnish wages. This bill would extend that to 180 days so it gives a better opportunity to make the process more efficient. **{Tape : 1; Side : A; Approx. Time Counter : 17.2 - 25.8}**

**Opponents:**

**Steve Wade**, Montana Collector Association, spoke against the bill. He noted this was an unfair advantage to the state. He asked the committee to reject the bill. This would give the state priority and would be unfair to private collectors. **{Tape : 1; Side : A; Approx. Time Counter : 26.4 - 27}**

**Questions from Committee Members and Responses:**

**SENATOR COLE** asked **Mr. Wade** whether anyone that had to collect debts would have to file for each period. **Mr. Wade** replied that the bill deals with warrants of distraint issued by the department and then automatically makes them on course with writ of execution and then is continuous until satisfied but no longer than ten years. Private collectors would not be able to do that. He said that there is a level playing field right now. The concern is the ability for a private judgement to be collected. The Department of Revenue would automatically take precedence over that judgement. The other concern would be the Department of Revenue acting as the collector for all state agencies. It is preferred that the process be competitive and not an unfair advantage for the Department of Revenue. **{Tape : 1; Side : A; Approx. Time Counter : 27 - 30}**

**SENATOR COLE** asked **Mr. Hyatt** about the fairness of the bill. **Mr. Hyatt** said the bill is more of a wage levy. The department feels it is still a level playing field. When a warrant for distraint is filed it is a first come first served issue. This creates efficiencies in the process to not have to continually produce paperwork to garnish wages and the employers do not have to continually file. The 180 day period would be enough time to resolve those matters. **{Tape : 1; Side : A; Approx. Time Counter : 30 - 32.1}**

**SENATOR ELLINGSON** asked **Mr. Wade** if the levy would remain continuous until satisfied. **Mr. Wade** noted he would be in favor of the writ if it was truly first come first serve. His worry

was this continues until fulfilled. Everyone else has to go back each time and re-file. He described the writ process now in the private sector. **SENATOR ELLINGSON** suggested there was a need to understand this point and a need to understand what the current law does. He asked Lee Heiman from Legislative Services to research this area for the committee. **CHAIRMAN DEPRATU** asked how the federal government related, whether they superseded the state. He asked **Lee Heiman** from Legislative Services to research this area for the committee. *{Tape : 1; Side : B; Approx. Time Counter : 1.1 - 3.5}*

**Closing by Sponsor:**

Senator Bishop closed.

**HEARING ON SENATE BILL 47**

**Sponsor:**

**SENATOR AL BISHOP**, SD 9, presented the bill. He distributed an amendment which would only compute interest on the debt after it was transferred to the department. It would also provide a review by the debtor by the transferring agency unless that had already been reviewed by that entity. This bill would centralize the collection of debts from various state agencies by putting them in the Department of Revenue. This would cut down on administrative costs. The Department of Revenue is set up right now to collect other agency debts. *{Tape : 1; Side : B; Approx. Time Counter : 6.4 - 6.8}*

**Proponents:**

**Neil Peterson**, representing the Department of Revenue, spoke in favor of the bill. The bill cleans up language that was missed from the last Session. He pointed out that any time the state issues a check to somebody such as an income tax refund or a payment of services there is an offset done. So if you owed an agency some money over here and you were getting an individual tax refund you would offset that debt against the refund and the state would be able to collect. The premise there is the state shouldn't be paying somebody that owes. This bill clarifies that the Department of Revenue has the authority to collect interest, interest would continue to run.

**Opponents:**

**Ken Rudio**, a taxpayer and a former state debt collector for 25 years, described the problems with interest on debt collected by

the department. He pointed out the bill does not address what the department will do with the money it collects. The problem with this is the department may be collecting the debt for child support. That money should go back to child support or may go back to the absent parent. This should be addressed. The debts sent in by other agencies are student loans or highway damage fees, for example. There are 30-40 agencies that would transfer debts to collect. He used the example of a student who had signed a contract with the school. The Department of Revenue may differ on the amount of interest collected from the school or the federal government. This should be looked at. He pointed out the bill would give the Department of Revenue the ability to bypass the courts with a warrant for distraint. He described an incident that happened over a student loan and the problems with collecting the debt where there was no correct address and no confrontation between debtor and creditor. **{Tape : 1; Side : B; Approx. Time Counter : 12 - 22.9}**

**Steve Wade**, representing the Montana Collectors Association, argued that the bill presented unfairness with the Department. Warrants of distraint used to be for tax purposes and now this bill would allow other debt collections. This presents a departure from the way private entities are allowed to collect debts. The concern is the creation of a situation where the Department of Revenue has an unfair competitive advantage against private collecting entities who may be trying to get the business of the state. Collection agencies that are members of the association are all employers. He pointed out the various bills presented all talk about the warrant for distraint, in relatively the same titles. The concern is that the Department of Revenue will be in a position that they will not have to use private collection entities and there should be competition. **{Tape : 1; Side : B; Approx. Time Counter : 22.9 - 25.1}**

#### **Questions from Committee Members and Responses:**

**SENATOR ELLINGSON** asked **Mr. Peterson** how other agencies referred debts to the department and what judicial processes were available to the debtor to appeal the contention that the debt is owned. **Mr. Peterson** replied there were two ways that debt came to the department from other agencies. One is the offset program. The agencies will give the department a listing of the debts that they want to potentially offset against. They haven't transferred the debt to the department for collection purposes. When a check is issued to someone if it runs up against that particular debt then the department sends a letter to that person saying they are going to offset the payment and they have thirty days to appeal. This is one process for review. **SENATOR ELLINGSON** asked if this was a formal or informal process. **Mr.**

**Peterson** replied that it was formal as it was set out in statute as far as steps and time lines. He noted that another department can transfer the debt and write it off their books as a debt and it is put on the books of the Department of Revenue. That is when the Department of Revenue, under this bill, can issue a warrant of distraint against that particular debt. Filing a warrant of distraint happens later after the attempt to collect the debt has failed. *{Tape : 1; Side : B; Approx. Time Counter : 25.1 - 30.4}*

**SENATOR BOHLINGER** asked about debts that were turned over to private collection agencies. **Mr. Wade** replied that the Department of Labor uses private entities. **SENATOR BOHLINGER** asked about the contractual relationship with private collection agencies. **Mr. Peterson** replied that the Department of Labor does enter into agreements with private collection agencies to collect some uninsured employers for Worker's Comp coverage. When they don't have Work Comp coverage then they are fined two or three times whatever the premium is. They do turn those debts over to a private collection agency and they pay a percentage depending on the level of effort. If they have to go to court to get an administrative judgement then they will take a greater percentage. **SENATOR BOHLINGER** asked if it was contemplated with the passage of SB 47 that the state would no longer employ private sector collectors so all of this work could be done in the Department of Revenue. **Mr. Peterson** replied that the Department of Revenue would like to be the central debt collection agency for state government. This, however, does not preclude the department from contracting with private collection agencies. *{Tape : 2; Side : B; Approx. Time Counter : 1.9 - 2.9}*

**SENATOR BOHLINGER** asked **Mr. Rudio** about his relationship to the state. He asked about the student that had left school and no longer pays his student loans but now wants to buy a car and finds that the finance company notices this obligation and this comes as a big surprise. **Mr. Rudio** replied that the student may have had a deferment in place and may not owe the debt. Many of the debts that he has worked on were disputed. Debts are turned over to the Department of Revenue where there is no current address and the person may not know about the debt. Care should be taken so as to not run over peoples' rights. *{Tape : 2; Side : B; Approx. Time Counter : 2.9 - 7.2}*

**Closing by Sponsor:**

**SENATOR BISHOP** closed. He pointed out that other agencies do not have to assign their debts to the Department of Revenue. **SENATOR BOHLINGER** asked if the bill should put all debts and tax under

one flat rate of interest so there was no disparity of two percentage points from the federal government. **Mr. Rudio** replied that would help. **{Tape : 2; Side : B; Approx. Time Counter : 15.2 - 16.8}**



**ADJOURNMENT**

Adjournment: 9:10 A.M.

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SENATOR BOB DEPRATU, Chairman

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DEB THOMPSON, Secretary

BD/DT

tas09aad

**EXHIBIT** (tas09aad)